IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1941.

No. 630.

CHARLES C. HOBART, doing business as THE HOBART CABINET COMPANY,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

REPLY BRIEF FOR CHARLES C. HOBART, DOING BUSINESS AS THE HOBART CABINET COMPANY, PETITIONER.

Counsel for the National Labor Relations Board cite at page 6 of their brief, the case of *International Association of Machinists, Tool and Die Makers Lodge No. 35* v. *National Labor Relations Board*, 311 U. S. 72; 85 Law Ed. 5.

This Honorable Court, at page 9 of its decision in this case, clearly states its position regarding coercive statements by minor supervisory employees, as follows:

> "The employer, however, may be held to have assisted the formation of a union even though the acts of the so-called agents were not expressly authorized or might not be attributable to him on strict application of the rules of respondeat superior. We are dealing here not with private rights (*Amalgamated Utility Workers* v. *Consolidated Edison Co.*, 309 U. S. 261, 84 Law Ed. 738, 60 S. Ct. 561) nor with technical concepts pertinent to an employer's legal responsibility to third persons for acts of his servants, but with a clear legislative policy to free the collective bargaining process from all taint of an employer's compulsion, domination, or influence. The existence of that interference must be determined by careful scrutiny of all the factors, often subtle, which restrain the employees' choice and for which the employer may fairly be said to be responsible."

Petitioner contends that the application of this rule by The National Labor Relations Board and the several Circuit Courts of Appeals is not consistent nor in accordance with equitable principles and the exigencies of substantial justice. The National Labor Relations Board apparently considers this rule axiomatic and that it is impelled thereby to find against an employer, whether honest or not, and read into his every word and every act a sinister purpose to compel, dominate or interfere with the collective bargaining process. The Board has followed that procedure in the case at bar and the Court of Appeals, Sixth Circuit, without opinion, has approved it.

It is the contention of Petitioner that the Supreme Court of the United States did not intend to establish and has not established a hard and fast rule, which automatically imposes a penalty for unfair labor practice upon an employer, whenever a minor supervisory employee expresses his per-

sonal views, or individual bias against unionization, or makes indiscreet remarks to the same effect.

The Supreme Court does not invest the National Labor Relations Board with a prerogative and power to attribute subtlety to an employer when the record discloses none, and base its findings of unfair labor practice upon a misinterpretation of the evidence in a given case. It has done so, however, in the case at bar.

The Board has consistently, for instance, misquoted (Exhibit 3, Re. 27, Respondent's Brief, Page 4) in the following language:

> "Do you wish to bargain for your rate of pay * * * "?

The proper words of Exhibit 3 are:

> "Do you wish a union to bargain for your rate of pay * * * "?

This misquotation is indicative of the Board's consistent misconstruction of the evidence. There is no basis for its conclusion that Hobart had the slightest intention of interfering with, restraining or coercing his employees in the exercise of their rights to unionization and collective bargaining. There is no evidence in the entire record that Hobart made any disparaging remarks whatsoever regarding unions or unionization or collective bargaining, nor is there a single act or statement by Hobart which can, except by misconstruction, be construed as coercive. There is no evidence in the record that any statement or act of Hobart's actually interfered with the formation of a union or the rights of his employees.

On the other hand, Hobart made clear and definite statements of his neutral policy to his employee, Lester Williams, who was afterwards made president of the union. (Rec. 78 and seq.) He thereafter (Ex. 3, Rec. 27) by a questionnaire,

gave his employees an unhampered freedom of choice, and finally (Ex. 2, Rec. 29) Hobart reiterated his neutral policy towards unionization and collective bargaining.

The statements of foreman Jesse Arthur, (Appendix to Petition for Writ of Certiorari) were neither direct nor indirect quotations from Hobart, nor a statement of Hobart's policy, nor were they made in Hobart's interest. Hobart did not at any time say directly or by inference that he would close the shop if his employees joined a union.

The undisputed facts in the Record disclose that it had long been Hobart's custom to discuss problems of mutual interest with his employees and that they were friendly discussions. It is not reasonable nor in accord with common sense to conclude that Hobart conferred with his employees about unions or submitted a questionnaire to them for the purpose of interfering with, restraining or coercing them in the exercise of their rights guaranteed under the Act, particularly when he specifically and consistently advised them of his neutral position regarding unionization.

The National Labor Relations Act was not intended to vest managerial authority. In the effort of the National Labor Relations Board to prevent unfair labor practice and to secure to the employee his rights guaranteed by the Act, the welfare of the honest employer should not be overlooked, nor the Board permitted to make its authority a pretext for interference with the employer's fundamental rights which are distinctive to our type of economy.

Martel Mills Corp. v. *N. L. R. B.*, 114 Fed. 2d., 624, 633.

Quaker State Oil Refining Corp. v. *N. L. R. B.*, 119 Fed. 631, 632.

Because this case involves an interpretation of the application by the National Labor Relations Board, and the Courts

of Appeals of fundamental policies under the Act, as well as the rights of an 'honest employer", it merits the consideration of this Honorable Court and the Writ of Certiorari should be granted.

Respectfully submitted,

L. H. SHIPMAN,
F. L. SHIPMAN,
BAIRD BROOMHALL,
Attorneys for Petitioner, Charles C. Hobart, doing business as The Hobart Cabinet Company.